

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Instructions – Read Carefully

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under the penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$ _____, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is _____.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

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H PETITION UNDER 28 USC § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District	
Name <u>AVID C. OWUOR</u>		Prisoner No. <u>34039</u>	Case No. <u>5217</u>
Place of Confinement <u>PLYMOUTH COUNTY CORRECTIONAL FACILITY</u>		RECEIPT # <u>5217</u> ACCOUNT # <u>5217</u> FEE ISS. <u>5217</u> LOCAL RULE #1 <u>5217</u>	
Name of Petitioner (include name under which convicted) <u>AVID C. OWUOR</u>		Name of Respondent (author or official having custody of petitioner) <u>INS. DISTRICT DIRECTOR</u> <u>V. STEVEN FARROW MARSON</u> <u>DEPUTY SUPERINTENDENT OF PRISON</u> <u>BRIAN GILLEN</u>	
The Attorney General of the State of: <u>MASSACHUSETTS</u>			
PETITION 03-1244			
1. Name and location of court which entered the judgment of conviction under attack <u>IMMIGRATION COURT</u> <u>606 S. OLIVE STREET 15TH FLOOR, LOS ANGELES, CA 90014</u>			
2. Date of judgment of conviction <u>MARCH 5, 1992</u>			
3. Length of sentence <u>DEPORTATION ORDERED IN ABSENCE</u>			
4. Nature of offense involved (all counts) <u>ASSAULT WITH FIREARM</u>			
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> (b) Guilty <input type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: <hr/>			
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input checked="" type="checkbox"/>			
7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

9. If you did appeal, answer the following:

- (a) Name of court _____
- (b) Result _____
- (c) Date of result and citation, if known _____
- (d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court _____
- (2) Result _____
- (3) Date of result and citation, if known _____
- (4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court IMMIGRATION COURT, LOS ANGELES
- (2) Nature of proceeding MOTION TO REOPEN IN DEPORTATION PROCEEDINGS
- (3) Grounds raised FAILURE TO GIVE PROPER NOTICE OF TIME AND PLACE OF HEARING; I WAS STATUTORILY ELIGIBLE

FOR FORMER SECTION 212 (C) RELIEF; HARDSHIP THAT
WOULD BE SUFFERED BY ME AND MY FAMILY SINCE I
LIVED HERE SINCE THE AGE OF 2 YEARS OLD

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result MOTION DENIED

(6) Date of result MARCH 12, 2003

(b) As to any second petition, application or motion give the same information:

(1) Name of court BOARD OF IMMIGRATION APPEALS

(2) Nature of proceeding APPEAL OF MOTION TO REOPEN IN
DEPORTATION PROCEEDINGS

(3) Grounds raised IMMIGRATION JUDGES DID NOT ALLOW ME TO PRESENT
EVIDENCE THAT WAS MATERIAL & COULD NOT HAVE BEEN
PRESENTED AT LAST HEARING; THE IMMIGRATION JUDGES DECISION
WAS BASED ON ERRONEOUS FACTS.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result APPEAL DENIED

(6) Date of result OCTOBER 8, 2003

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: I WAS ELIGIBLE FOR CANCELLATION OF REMOVAL & FORMER SECTION 212 (c) PRIOR TO THE ORDER OF DEPORTATION

Supporting FACTS (state briefly without citing cases or law) I HAVE BEEN A LAWFUL PERMANENT RESIDENT LIVING IN THE UNITED STATES FOR OVER SEVEN YEARS, I HAVE NOT SERVED MORE THAN FIVE YEARS IN PRISON FOR AN AGGRAVATED FELONY, AND MY FAMILY LIVING HERE ARE U.S. CITIZENS AND LAWFUL PERMANENT RESIDENTS

B. Ground two: THE IMMIGRATION JUDGE BASED HIS DECISION ON ERRONEOUS FACTS

Supporting FACTS (state briefly without citing cases or law) THE IMMIGRATION JUDGE STATED THAT PROPER NOTICE WAS GIVEN ON 12-5-91 ABOUT THE NEXT HEARING BUT I HAVE A NOTICE OF RESCHEDULED MASTER CALENDAR HEARING WHICH SHOWS I WAS IN COURT ON 1-14-92, & THE SERVICE HAS NOT PRODUCED ANY DOCUMENTS OR EVIDENTIARY FACTS TO PROVE PROPER NOTICE FOR THE HEARING DATED 12-5-1992. WAS GIVEN AFTER THE LAST HEARING DATED 1-14-92.

C. Ground three: THE CRIME CONVICTED WAS NOT AN
AGGRAVATED FELONY

Supporting FACTS (state briefly without citing cases or law) AS DEFINED A
AGGRAVATED FELONY CONSISTS OF A CRIME OF
VIOLENCE WITH A SENTENCE OF ~~1~~ 1 YEAR OR
MORE BUT IN THIS CASE THE TIME SERVED
WAS 6 MONTHS.

D. Ground four: MY FAMILY WOULD SUFFER EXTREME HARDSHIP
DO TO ME BEING DEPORTED.

Supporting FACTS (state briefly without citing cases or law) ALL MY FAMILY LIVES
HERE & IVE LIVED HERE SINCE THE AGE OF 2 YEARS OLD
MY FAMILY NEEDS THE FINANCIAL SUPPORT I'VE BEEN
PROVIDING DUE TO MY FATHERS ILLNESS IN WHICH HE
IS FREQUENTLY HOSPITALIZED.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: # 1 B; C

DOE TO THE FACT THAT I WAS ORDERED DEPORTED IN ABSENTIA
I WAS NOT ABLE TO APPEAL OR CHALLENGE THE DEPORTATION
ORDER

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☒ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing _____

(b) At arraignment and plea _____

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- (c) At trial _____
- (d) At sentencing _____
- (e) On appeal _____
- (f) In any post-conviction proceeding DOREEN A. EMENIKE.
3580 WILSHIRE BLVD SUITE 1624, LOS ANGELES CA 90010
- (g) On appeal from any adverse ruling in a post-conviction proceeding PRO-SE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-11-03
(date)


Signature of Petitioner